

RESOLUTION NO. 2015 – 06

RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AUTHORIZING THE CHAIRMAN TO EXECUTE A SECOND AMENDMENT TO THE
AGREEMENT FOR LEGAL SERVICES WITH OPPER & VARCO, LLP, FOR
CONTINUED LEGAL WORK REGARDING ENVIRONMENTAL REMEDIATION,
UNDERGROUND STORAGE TANKS, AND ENVIRONMENTAL MATTERS RELATED
TO SUCCESSOR AGENCY-OWNED PROPERTIES AND SUCCESSOR AGENCY
OBLIGATIONS, AND TO INCREASE THE NOT TO EXCEED AMOUNT BY \$80,000,
FOR A TOTAL NOT TO EXCEED AMOUNT OF \$130,000

WHEREAS, on October 3, 2011, the Community Development Commission of the City of National City ("CDC") and the law firm Opper & Varco, LLP ("Firm"), entered into an Agreement on October 3, 2011, ("Agreement") whereby the Firm agreed to represent the CDC in connection with redevelopment and environmental issues and provide services with a value not to exceed amount of \$13,000; and

WHEREAS, on February 1, 2012, all California redevelopment agencies, including the CDC were dissolved, and the law established "successor agencies" tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies, including but not limited to contracts such as the Agreement with the Firm; and

WHEREAS, on February 26, 2013, the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Successor Agency") and the Firm entered into the first amendment to the Agreement to increase the not to exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000, whereby the Firm would continue to provide legal services; and

WHEREAS, the Successor Agency has a continuing need for environmental legal work, and the Successor Agency and Firm desire to include more specifically in the scope of work, environmental remediation, underground storage tanks for Successor Agency-owned properties, and environmental obligations of the Successor Agency; and

WHEREAS, the Agreement provides that the Successor Agency determines the scope of the Firm's work thereunder; and

WHEREAS, the changes to the scope of work desired by the Successor Agency require approval and execution of a second amendment to the Agreement incorporating an increase to the not-to-exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000 ("Second Amendment"); and

WHEREAS, the Firm's Agreement with the Firm as amended to date has been listed on the Successor Agency's Recognized Obligations Payments Schedule, and has been approved by the California Department of Finance as such; and

WHEREAS, on May 19, 2015, the Successor Agency adopted Resolution No. 2015-64 approving the Second Amendment; and

WHEREAS, the Second Amendment must also be approved by the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board") prior to being effective; and

WHEREAS, on May 20, 2015, in the course of taking action on an properly agendized item at a regular meeting, the Oversight Board considered the approval of the Second Amendment, and upon (i) further consideration of all information and documentation presented by staff, (ii) all public comment and Oversight Board deliberation, if any, and (iii) the recommendation of the Successor Agency's staff, did independently find and determine that the Second Amendment should be approved.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board") as follows:

Section 1. The foregoing recitals are true and correct, and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the Second Amendment to the Agreement between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and the law firm of Oppen & Varco, LLP, a true and correct copy of which is on file in the office of the City Clerk of the City of National City, contingent upon State Department of Finance approval, inclusive of an increase in the previously approved not-to-exceed amount of \$80,000 to a new amount of \$130,000;

Section 3. The Chairman of the Successor Agency, or his designee, is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board;

Section 4. The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

Section 5. The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

Section 6. Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

PASSED and ADOPTED this 20th day of May, 2015.

AYES: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke

NOES: None

ABSENT: McCarthy

ABSTAIN: None

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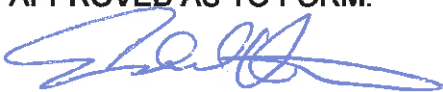
Ron Morrison, Chairman

ATTEST:

A handwritten signature in blue ink, appearing to be 'BR', written over a horizontal line.

Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to be 'EK', written over a horizontal line.

Oversight Board Counsel
Edward Z. Kotkin, Esq.
Law Offices of Edward Z. Kotkin

**SECOND AMENDMENT TO AGREEMENT
BY AND BETWEEN
THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AND
OPPER AND VARCO, LLP**

This Second Amendment to Agreement is entered into this 19th day of May, 2015, by and between the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, a California public entity, ("SUCCESSOR AGENCY"), and OPFER AND VARCO, LLP, ("FIRM").

RECITALS

WHEREAS, COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY ("CDC") and FIRM (the "Parties") entered into an Agreement on October 3, 2011, ("the Agreement") wherein the FIRM agreed to assist in representing the CDC in connection with redevelopment and environmental issues for the not to exceed amount of \$13,000; and

WHEREAS, on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies; and

WHEREAS, on February 26, 2013, the SUCCESSOR AGENCY and the FIRM entered into the First Amendment to the Agreement to increase the not to exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000 for continued legal services for non-owned properties; and

WHEREAS, because the Successor Agency has a continuing need for environmental legal work, the Parties desire to amend the Agreement to include more specifically in the scope of work environmental remediation and underground storage tanks for Successor Agency-owned properties, and existing Successor Agency environmental obligations for non-owned properties; and

WHEREAS, the Agreement allows the Successor Agency to determine the scope of work; and

WHEREAS, this continuing environmental legal work requires an increase to the not-to-exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000; and

WHEREAS, this obligation is listed on the Recognized Obligations Payments Schedule, which has been approved by the California Department of Finance; and

WHEREAS, this Second Amendment will require approval of the Oversight Board to the Successor Agency, as well as the California Department of Finance prior to being effective.

AGREEMENT

NOW, THEREFORE, the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, and OPPER AND VARCO, LLP, hereto agree that the Agreement entered into on October 3, 2011, shall be amended as follows:

- A. Article 2 (Scope of Services) shall be amended to add more specifically environmental remediation, and underground storage tanks generally for Successor Agency-owned properties and Successor Agency environmental obligations.
- B. Article 3 (Compensation), Section C of the Agreement shall be amended to increase the not-to-exceed amount by \$80,000, for a total not-to-exceed amount of \$130,000.

The parties further agree that with the foregoing exception, each and every term and provision of the Agreement dated October 3, 2011, and First Amendment dated February 26, 2013, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year first above written.

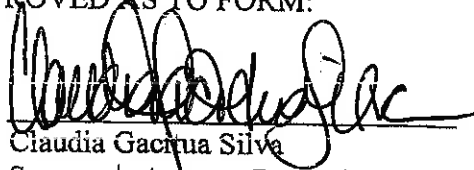
**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION AS THE NATIONAL CITY
REDEVELOPMENT AGENCY**

By: 
Leslie Deese
Executive Director

OPPER AND VARCO, LLP

By: 
Richard Oppen, Partner

APPROVED AS TO FORM:

By: 
Claudia Gachua Silva
Successor Agency Counsel

RESOLUTION NO. 2015 – 64

RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY AUTHORIZING
THE MAYOR TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT
FOR LEGAL SERVICES WITH OPPER & VARCO, LLP, FOR CONTINUED
LEGAL WORK REGARDING ENVIRONMENTAL REMEDIATION,
UNDERGROUND STORAGE TANKS, AND ENVIRONMENTAL WORK
GENERALLY FOR SUCCESSOR AGENCY-OWNED PROPERTIES, AND
SUCCESSOR AGENCY ENVIRONMENTAL OBLIGATIONS, AND TO
INCREASE THE NOT TO EXCEED AMOUNT BY \$80,000, FOR
A TOTAL NOT TO EXCEED AMOUNT OF \$130,000

WHEREAS, Community Development Commission of the City of National City ("CDC") and Oppen & Varco, LLP, entered into an Agreement on October 3, 2011, ("the Agreement") wherein the Oppen & Varco agreed to assist in representing the CDC in connection with redevelopment and environmental issues for the not to exceed amount of \$13,000; and

WHEREAS, on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies; and

WHEREAS, on February 26, 2013, the SUCCESSOR AGENCY and the FIRM entered into the First Amendment to the Agreement to increase the not to exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000 for continued legal services; and

WHEREAS, because the Successor Agency has a continuing need for environmental legal work, the Parties desire to include more specifically in the scope of work, including environmental remediation and underground storage tanks for Successor Agency-owned properties, and environmental obligations; and

WHEREAS, the Agreement allows the Successor Agency to determine the scope of work; and

WHEREAS, this continuing environmental legal work requires an increase to the not-to-exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000; and

WHEREAS, this obligation is listed on the Recognized Obligations Payments Schedule, and has been approved by the California Department of Finance; and


WHEREAS, this Second Amendment will require approval of the Oversight Board to the Successor Agency, as well as the California Department of Finance prior to being effective.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby authorizes the Mayor to execute the Second Amendment to the Agreement between the City of National City and Oppert & Varco, LLP, to include more specifically environmental remediation, and underground storage tanks generally for Successor Agency-owned properties, and Successor Agency environmental obligations, and to increase the not to exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000 for continuing legal services. Said Second Amendment to the Agreement is on file in the office of the City Clerk.

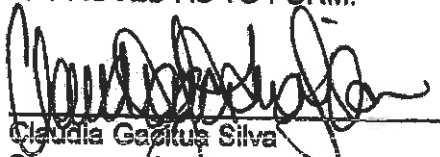
PASSED and ADOPTED this 19th day of May, 2015.


Ron Morrison, Chairman

ATTEST:


Michael R. Dalla, City Clerk as
Secretary to the Successor Agency

APPROVED AS TO FORM:


Claudia Gasitua Silva
Successor Agency Counsel

Passed and adopted by the Successor Agency to the Community Development Commission as the Redevelopment Agency of the City of National City, California, on May 19, 2015 by the following vote, to-wit:

Ayes: Boardmembers Cano, Mendivil, Morrison, Rios, Sotelo-Solis.

Nays: None.

Absent: None.

Abstain: None.

AUTHENTICATED BY: RON MORRISON
Chairman of the Successor Agency to the
Community Development Commission
as the Redevelopment Agency of the
City of National City, California



City Clerk Serving as Secretary
to the Successor Agency

By: _____
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2015-64 of the Successor Agency to the Community Development Commission as the Redevelopment Agency of the City of National City, California, passed and adopted on May 19, 2015.

City Clerk Serving as Secretary
to the Successor Agency

By: _____
Deputy

C2006-43

**SUCCESSOR AGENCY TO
THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AGENDA STATEMENT**

MEETING DATE: May 19, 2015

AGENDA ITEM NO.2

ITEM TITLE: Resolution of the Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the Mayor to execute a Second Amendment to the Agreement for legal services with Opper & Varco, LLP, for continued legal work regarding environmental remediation, underground storage tanks, and environmental work generally for Successor Agency-owned properties and Successor Agency obligations, and to increase the not to exceed amount by \$80,000, for a total not to exceed amount of \$130,000.

PREPARED BY: Claudia Gacitua Silva
PHONE: Ext. 4222

DEPARTMENT: City Attorney

APPROVED BY: 

EXPLANATION:

The CDC and Opper & Varco entered into an Agreement on October 3, 2011, for the not to exceed amount of \$13,000 wherein Opper & Varco agreed to assist in representing the CDC in connection with redevelopment and environmental issues.

On February 26, 2013, the Successor Agency and Opper & Varco entered into the First Amendment to the Agreement increasing the not-to-exceed amount by \$37,000, for a total not to exceed amount of \$50,000 for continuing legal services.

There is a continuing need for assistance to address environmental matters for both Successor Agency owned property or Successor Agency obligations, thus, the parties desire to enter into a Second Amendment to the Agreement to increase the not-to-exceed amount by \$80,000 for a total Agreement amount of \$130,000.

FINANCIAL STATEMENT:

ACCOUNT NO.

APPROVED: _____ **Finance**

APPROVED: _____ **MIS**

Funds are budgeted in Account No. 001-499-500-598-3934

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: INTRODUCTION: ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Adopt proposed resolution.

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

- | | |
|--------------------------------------|---|
| 1. 2011 Agreement for Legal Services | 3. Proposed Second Amendment to the Agreement |
| 2. First Amendment to the Agreement | 4. Proposed resolution |

RESOLUTION NO. 2015-64

**AGREEMENT FOR LEGAL SERVICES
BY AND BETWEEN
COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF NATIONAL CITY
AND
OPPER AND VARCO LLP**

THIS AGREEMENT FOR LEGAL SERVICES (the "Agreement") is made between THE COMMUNITY DEVELOPMENT COMMISSION FOR THE CITY OF NATIONAL CITY (the "CDC") and OPFER AND VARCO, LLP, (the "FIRM"). This Agreement sets forth the parties' mutual understanding concerning legal services to be provided by the FIRM and the fee arrangement for said services.

Article 1. Retainer. The CDC hereby retains the FIRM to assist in representing the CDC in connection with environmental obligations and funds owed to the CDC per the Cooperative Remediation Agreement for the Park Village Project, National City California by and between the CDC and the Beauchamp Family Trust dated February 6, 2006, subject to this Agreement.

Article 2. Scope of Services. The CDC shall have the right in its sole discretion to determine the particular services to be performed by the FIRM under this Agreement. These services may include the following: represent and advise the City and its Redevelopment Division on matters related to the collection of money for obligations that were created in prior redevelopment and remediation agreements regarding the project and the developer for the Park Village project which was not completed. It is expected that the FIRM will work with the CDC Attorney and City staff. The FIRM has been representing the CDC's interests since the inception of the Cooperative Remediation Agreement, and the parties desire to further formalize the relationship into writing. This Agreement is necessary so that the CDC can protect and enforce its interests in the existing Cooperative Remediation Agreement.

Article 3. Compensation. Compensation paid under this Agreement shall be as follows:

Partner:	\$325.00 per hour
Senior Associate:	\$275 per hour
Associate:	\$195 per hour
Paralegal/Legal Assistant:	\$95 per hour

A. The FIRM shall not use more than one attorney for the same specific task without the CDC's approval. The FIRM may use the minimum number of attorneys for this engagement consistent with good professional practice after consulting with and obtaining approval by the CDC.

B. The FIRM agrees to document a plan and budget consistent with the scope of services described above in Article 2 to be agreed to by the CDC Attorney and the FIRM. The CDC shall not be obligated to pay the FIRM amounts not discussed, budgeted, and agreed to before being incurred by the FIRM. Please see attachment A.

C. The CDC has appropriated or otherwise duly authorized the payment of an amount not to exceed \$13,000 for legal services and out-of-pocket disbursements pursuant to this Agreement. In no event shall the total fees plus out-of-pocket disbursements exceed this amount without written authorization of the CDC.

D. The FIRM shall keep the CDC advised monthly as to the level of attorney hours and client services performed under Article 1. The FIRM will not charge the CDC for travel time; however, the FIRM may charge for work performed for the CDC during any travel time.

E. The CDC further agrees to reimburse the FIRM, in accordance with the procedures set forth in this Article, for telephone, fax, mail, messengers, federal express deliveries, document reproduction, client-requested clerical overtime, lodging, and similar out-of-pocket expenses charged by the FIRM as a standard practice to its clients generally, with the exception of travel and meals. In any billing for disbursements, the FIRM shall provide the CDC with a statement breaking down the amounts by category of expense. The following items shall not be reimbursed, unless the CDC has specifically agreed otherwise:

(1) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(2) Storage of open or closed files, rent, electricity, local telephone, postage, receipts or transmission of telecopier documents, or any other items traditionally associated with overhead.

(3) Photocopy charges in excess of \$.15 (fifteen cents) per page.

(4) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(5) Secretarial overtime. Where case requirements demand overtime, the CDC will consider reimbursement on a case-by-case basis. The CDC will not reimburse overtime incurred for the convenience of the FIRM's failure to meet deadlines known in advance.

(6) Equipment, books, periodicals, research materials, Westlaw/Lexis or like items.

(7) Express charges, overnight mail charges, messenger services or the like, without the CDC's prior consent. The CDC expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the CDC will consider reimbursement on a case-by-case basis.

(8) Travel and meals.

(9) Late payment charge and/or interest. Due to the nature of the CDC's payment process, the CDC will not pay any late charges or interest charges to bills.

Every effort will be made to pay bills promptly.

F. Bills from the FIRM should be submitted to Claudia G. Silva, CDC Attorney, 1243 National City Boulevard, National City, CA 91950-4301. The individual time and disbursement records customarily maintained by the FIRM for billing evaluation and review purposes shall be made available to the CDC in support of bills rendered by the FIRM.

G. The FIRM agrees to forward to the CDC a statement of account for each one-month period of services under this Agreement, and the CDC agrees to compensate the FIRM on this basis. The FIRM will consult monthly with the CDC as to the number of attorney hours and client disbursements which have been incurred to date under this Agreement, and as to future expected levels of hours and disbursements.

H. Billing Format. Each billing entry must be complete, discrete and appropriate.

(1) Complete.

(a) Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.

(b) The date the work was performed must be included.

(c) The hours should be billed in .10 hour increments.

(d) The specific task performed should be described, and the related work product should be referenced ("telephone call re: trial brief," "interview in preparation for deposition").

(e) The biller's professional capacity (partner, associate, paralegal, etc.) should be included

(2) Discrete: Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

(3) Appropriate

(a) The CDC does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the CDC will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes. Neither will the CDC pay for outside expenses such as messenger delivery fees, outside photocopying, videotaping of depositions, investigative services, outside computer litigation support services, or overnight mail.

(b) Due to the nature of the CDC's payment process, the CDC will not pay any late charges. Every effort will be made to pay bills promptly.

I. Staffing. Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is a CDC decision, and the CDC's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

(1) Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal. Written authorization from the CDC must be had before associate hours billed exceed paralegal hours billed.

(2) Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the FIRM. The CDC will not pay the costs of bringing a new attorney up to speed.

(3) If more than one attorney is going to perform the same task, prior approval from the CDC must be had. This includes document review.

Article 4. Independent Contractor. The FIRM shall perform services as an independent contractor. It is understood that this contract is for unique professional services. Accordingly, the duties specified in this Agreement may not be assigned or delegated by the

FIRM without prior written consent of the CDC. Retention of the FIRM is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

Article 5. Confidentiality of Work. All work performed by the FIRM including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the FIRM pursuant to this Agreement is for the sole use of the CDC. All such work product shall be confidential and not released to any third party without the prior written consent of the CDC.

Article 6. Compliance with Controlling Law. The FIRM shall comply with all applicable laws, ordinances, regulations, and policies of the federal, state, and local governments as they pertain to this Agreement. In addition, the FIRM shall comply immediately with any and all directives issued by the CDC or its authorized representatives under authority of any laws statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

Article 7. Acceptability of Work. The CDC shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement and the amount of compensation due. In the event the FIRM and the CDC cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM in this Agreement, the CDC or the FIRM shall give to the other written notice. Within ten (10) business days, the FIRM and the CDC shall each prepare a report which supports their position and file the same with the other party. The CDC shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM.

Article 8. Indemnification. The FIRM agrees to indemnify and hold the CDC and its agents, officers, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including injury to the FIRM's employees, agents, or officers, which arise from or are connected with or caused or claimed to be caused by the acts or omissions of the FIRM and its agents, officers, or employees in performing the work or other obligations under this Agreement, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CDC, its agents, officers, or employees.

Article 9. Insurance. The FIRM shall not commence work under this Agreement until it has obtained all insurance required in this Article with a company or companies acceptable to the CDC. At its sole cost and expense, the FIRM shall take and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

A. Commercial general liability insurance with a combined single limit of not less than one million dollars (\$1,000,000).

B. For all of the FIRM's employees which are subject to this Agreement, to the extent required by the State of California, Workers' Compensation Insurance in the amount required by law.

C. Errors and omissions insurance in an amount not less than two million dollars (\$2,000,000) per claim.

D. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. The policies carried pursuant to paragraph 9.A above shall name as additional insureds the CDC and its elected officials, officers, employees, agents, and representatives. All policies shall contain language, to the extent obtainable, to the effect that: (1) the insurer waives the right of subrogation against the CDC and its elected officials, officers, employees, agents, and representatives; (2) the policies are primary and not contributing with any insurance that may be carried by the CDC; and (3) the policies cannot be cancelled or materially changed except after thirty (30) days' notice by the insurer to the CDC by certified mail. Before this Agreement shall take effect, the FIRM shall furnish the CDC with copies of all such policies upon receipt of them, or a certificate evidencing such insurance. The FIRM may effect for its own account insurance not required under this Agreement.

Article 10. Drug Free Work Place. The FIRM agrees to comply with the CDC's Drug-Free Workplace requirements. Every person awarded a contract by the CDC for the provision of services shall certify to the CDC that it will provide a drug-free workplace. Any subcontract entered into by the FIRM pursuant to this Agreement shall contain this provision.

Article 11. Non-Discrimination Provisions. The FIRM shall not discriminate against any subcontractor, vendor, employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The FIRM will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The FIRM agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CDC setting forth the provisions of this non-discrimination clause.

Article 12. Effective Date and Term. This Agreement shall be effective upon execution by the FIRM and CDC and continue until written notice of cancellation. This Agreement may be terminated at any time by either party with sixty (60) days' written notice to the other. Notice of termination by the FIRM shall be given to the CDC Attorney.

Article 13. Notification of Change in Form. The FIRM has the right to effect changes in form including but not limited to: the change in form from a partnership to a professional law corporation; the change in form of any partner or partners from an individual or individuals to a professional law corporation; the change in form of any corporate partner or partners to any individual partners. The CDC shall be promptly notified in writing of any change in form.

Article 14. Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the notice. Unless otherwise provided by notice in writing from the respective parties, notice to the Agency shall be addressed to:

Claudia G. Silva
CDC Attorney
City of National City
1243 National City Boulevard
National City, CA 91950-4301

cc: Chris Zapata, Executive Director
Community Development Commission of the City of National City
1243 National City Boulevard
National City, CA 91950-4301

Notice to the FIRM shall be addressed to:

Richard Oppen, Esq.
Oppen and Varco LLP
225 Broadway, Suite 1900
San Diego CA 92101

Nothing contained in this agreement shall preclude or render inoperative service or such notice in the manner provided by law.

Article 15. Headings. All article headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

Article 16. Miscellaneous Provisions.

A. **Time of Essence:** Time is of the essence for each provision of this Agreement.

B. **California Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The FIRM covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim, or matter arising out of or related to this Agreement.

C. **Integrated Agreement:** This Agreement including attachments and/or exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged in this Agreement. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the CDC and the FIRM.

D. **Severability:** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

E. **Waiver:** The failure of the CDC to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

F. Conflict of Interest: During the term of this Agreement, the FIRM shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CDC. This prohibition shall not preclude the CDC from expressly agreeing to a waiver of a potential conflict of interest under certain circumstances.

G. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

H. Construction. The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, and (iii) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 3rd day of October, 2011.

**COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF NATIONAL CITY**

By: _____
Chris Zapata, City Manager

Opper & Varco LLP
(Corporation – signatures of two corporate officers)
(Partnership – one signature)
(Sole proprietorship – one signature)

By: 
Richard Opper, Esq.

APPROVED AS TO FORM:

By: _____
Claudia G. Silva
CDC Attorney

Exhibit A

Term: October 2011 through October 2012

Scope: Represent and advise the CDC on matters relating to the collection of money for obligations that were created in prior redevelopment and remediation agreements regarding this project and the developer for the "Park Village" project which was not completed.

Estimated level of effort: I estimate a level of effort of 10 hours per month - that is predicated on arriving at a negotiated settlement with the Developer within the next four

months. If litigation becomes necessary, the CDC would agree to renegotiate this to an on-call or "as-needed" contract. (10 x \$325/hr. x 4 months = \$13,000.)

Total Cost: Flat rate for four month period \$13,000, to be adjusted to "as needed" should litigation be required.

F. Conflict of Interest: During the term of this Agreement, the FIRM shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CDC. This prohibition shall not preclude the CDC from expressly agreeing to a waiver of a potential conflict of interest under certain circumstances.

G. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

H. Construction. The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, and (iii) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 3rd day of October, 2011.

**COMMUNITY DEVELOPMENT
COMMISSION
OF THE CITY OF NATIONAL CITY**

By: _____

Chris Zapata, City Manager

Opper & Varco LLP

(Corporation – signatures of two corporate officers)

(Partnership – one signature)

(Sole proprietorship – one signature)

By: _____

Richard Oppen, Esq.

APPROVED AS TO FORM:

By: _____

Claudia G. Silva
CDC Attorney

Exhibit A

Term: October 2011 through October 2012

Scope: Represent and advise the CDC on matters relating to the collection of money for obligations that were created in prior redevelopment and remediation agreements regarding this project and the developer for the "Park Village" project which was not completed.

Estimated level of effort: I estimate a level of effort of 10 hours per month - that is predicated on arriving at a negotiated settlement with the Developer within the next four

months. If litigation becomes necessary, the CDC would agree to renegotiate this to an on-call or "as-needed" contract. (10 x \$325/hr. x 4 months = \$13,000.)

Total Cost: Flat rate for four month period \$13,000, to be adjusted to "as needed" should litigation be required.

**FIRST AMENDMENT TO AGREEMENT
BY AND BETWEEN
THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AND
OPPER AND VARCO, LLP**

This First Amendment to Agreement is entered into this 26th day of February, 2013, by and between the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, a California public entity, ("SUCCESSOR AGENCY"), and OPFER AND VARCO, LLP, ("FIRM").

RECITALS

- A. SUCCESSOR AGENCY and FIRM (the "Parties") entered into an Agreement on October 3, 2011, ("the Agreement") wherein the FIRM agreed to assist in representing the CDC in connection with environmental obligations and funds owed to the CDC per the Cooperative Remediation Agreement for the Park Village Project, National City California, by and between the CDC and the Beauchamp Family Trust dated February 6, 2006.
- B. The SUCCESSOR AGENCY requires continuing legal services related to representing and advising the SUCCESSOR AGENCY on matters related to the collection of money for obligations that were created in prior redevelopment and remediation agreements regarding the project and the developer for the Park Village Project which was not completed. The Parties desire to amend the Agreement to increase the not-to-exceed amount of the Agreement by \$37,000, for a total not-to-exceed amount of \$50,000.
- C. On January 10, 2012, the City Council adopted Resolution No. 2012-15, pursuant to Part 1.85 of the California Health and Safety Code, electing for the City to serve as the successor agency to the Community Development Commission of the City of National City upon the dissolution of the Redevelopment Agency.
- D. On February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies.
- E. This First Amendment may require the amendment of the Recognized Obligations Payments Schedule and will require approval of the Oversight Board to the SUCCESSOR AGENCY as well as the California Department of Finance prior to being effective.

AGREEMENT

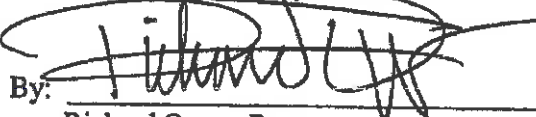
NOW, THEREFORE, the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, and OPPER AND VARCO, LLP, hereto agree that the Agreement entered into on October 3, 2011, shall be amended by amending Article 3 (Compensation), Section C of the Agreement by increasing the not-to-exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000.

The parties further agree that with the foregoing exception, each and every term and provision of the Agreement dated October 3, 2011, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year first above written.

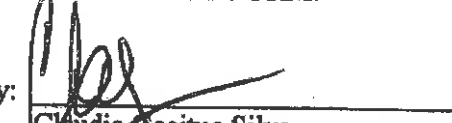
SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION AS THE NATIONAL
CITY REDEVELOPMENT AGENCY

OPPER AND VARCO, LLP

By: 
Richard Oppen, Partner

By: 
Leslie Deese
Executive Director

APPROVED AS TO FORM:

By: 
Claudia Gacitua Silva
Successor Agency Counsel

**SECOND AMENDMENT TO AGREEMENT
BY AND BETWEEN
THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AND
OPPER AND VARCO, LLP**

This Second Amendment to Agreement is entered into this 19th day of May, 2015, by and between the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, a California public entity, ("SUCCESSOR AGENCY"), and OPFER AND VARCO, LLP, ("FIRM").

RECITALS

WHEREAS, COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY ("CDC") and FIRM (the "Parties") entered into an Agreement on October 3, 2011, ("the Agreement") wherein the FIRM agreed to assist in representing the CDC in connection with redevelopment and environmental issues for the not to exceed amount of \$13,000; and

WHEREAS, on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies; and

WHEREAS, on February 26, 2013, the SUCCESSOR AGENCY and the FIRM entered into the First Amendment to the Agreement to increase the not to exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000 for continued legal services for non-owned properties; and

WHEREAS, because the Successor Agency has a continuing need for environmental legal work, the Parties desire to amend the Agreement to include more specifically in the scope of work environmental remediation and underground storage tanks for Successor Agency-owned properties, and existing Successor Agency environmental obligations for non-owned properties; and

WHEREAS, the Agreement allows the Successor Agency to determine the scope of work; and

WHEREAS, this continuing environmental legal work requires an increase to the not-to-exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000; and

WHEREAS, this obligation is listed on the Recognized Obligations Payments Schedule, which has been approved by the California Department of Finance; and

WHEREAS, this Second Amendment will require approval of the Oversight Board to the Successor Agency, as well as the California Department of Finance prior to being effective.

AGREEMENT

NOW, THEREFORE, the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, and OPPER AND VARCO, LLP, hereto agree that the Agreement entered into on October 3, 2011, shall be amended as follows:

- A. Article 2 (Scope of Services) shall be amended to add more specifically environmental remediation, and underground storage tanks generally for Successor Agency-owned properties and Successor Agency environmental obligations.
- B. Article 3 (Compensation), Section C of the Agreement shall be amended to increase the not-to-exceed amount by \$80,000, for a total not-to-exceed amount of \$130,000.

The parties further agree that with the foregoing exception, each and every term and provision of the Agreement dated October 3, 2011, and First Amendment dated February 26, 2013, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year first above written.

**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION AS THE NATIONAL CITY
REDEVELOPMENT AGENCY**

OPPER AND VARCO, LLP

By: _____
Leslie Deese
Executive Director

By: _____
Richard Oppen, Partner

APPROVED AS TO FORM:

By: _____
Claudia Gacitua Silva
Successor Agency Counsel

RESOLUTION NO. 2015 –

RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY AUTHORIZING
THE MAYOR TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT
FOR LEGAL SERVICES WITH OPPER & VARCO, LLP, FOR CONTINUED
LEGAL WORK REGARDING ENVIRONMENTAL REMEDIATION,
UNDERGROUND STORAGE TANKS, AND ENVIRONMENTAL WORK
GENERALLY FOR SUCCESSOR AGENCY-OWNED PROPERTIES, AND
SUCCESSOR AGENCY ENVIRONMENTAL OBLIGATIONS, AND TO
INCREASE THE NOT TO EXCEED AMOUNT BY \$80,000, FOR
A TOTAL NOT TO EXCEED AMOUNT OF \$130,000

WHEREAS, Community Development Commission of the City of National City ("CDC") and Oppen & Varco, LLP, entered into an Agreement on October 3, 2011, ("the Agreement") wherein the Oppen & Varco agreed to assist in representing the CDC in connection with redevelopment and environmental issues for the not to exceed amount of \$13,000; and

WHEREAS, on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies; and

WHEREAS, on February 26, 2013, the SUCCESSOR AGENCY and the FIRM entered into the First Amendment to the Agreement to increase the not to exceed amount by \$37,000, for a total not-to-exceed amount of \$50,000 for continued legal services; and

WHEREAS, because the Successor Agency has a continuing need for environmental legal work, the Parties desire to include more specifically in the scope of work, including environmental remediation and underground storage tanks for Successor Agency-owned properties, and environmental obligations; and

WHEREAS, the Agreement allows the Successor Agency to determine the scope of work; and

WHEREAS, this continuing environmental legal work requires an increase to the not-to-exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000; and

WHEREAS, this obligation is listed on the Recognized Obligations Payments Schedule, and has been approved by the California Department of Finance; and

WHEREAS, this Second Amendment will require approval of the Oversight Board to the Successor Agency, as well as the California Department of Finance prior to being effective.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby authorizes the Mayor to execute the Second Amendment to the Agreement between the City of National City and Oppen & Varco, LLP, to include more specifically environmental remediation, and underground storage tanks generally for Successor Agency-owned properties, and Successor Agency environmental obligations, and to increase the not to exceed amount of the Agreement by \$80,000, for a total not-to-exceed amount of \$130,000 for continuing legal services. Said Second Amendment to the Agreement is on file in the office of the City Clerk.

PASSED and ADOPTED this 19th day of May, 2015.

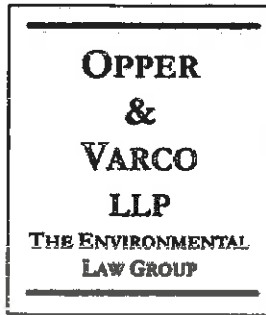
Ron Morrison, Chairman

ATTEST:

Michael R. Dalla, City Clerk as
Secretary to the Successor Agency

APPROVED AS TO FORM:

Claudia Gacitua Silva
Successor Agency Counsel



225 Broadway, Suite 1900
San Diego, CA 92101
Phone: (619) 231-5858
Fax: (619) 231-5853
www.envirolawyer.com

TRANSMITTAL MEMO

DATE: May 15, 2015

TO: Ginny Miller
Executive Assistant to the City Attorney
City of National City
1243 National City Blvd
National City, CA 91950-4301

RE: City of National City

ENCLOSURES: Two signed original Second Amendment to Agreement by and between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and Opper and Varco, LLP.

Very truly yours,

Janene Kallen
Assistant to Suzanne R. Varco, Esq.
and Richard G. Opper, Esq.



**CITY OF NATIONAL CITY
Office of the City Clerk**

1243 National City Blvd., National City, California 91950
619-336-4228 phone / 619-336-4229 fax

Michael R. Dalla, CMC - City Clerk

OPPER & VARCO, LLP

**Amendment #2
Legal Services**

**Dionisia Trejo (Mayor's & City Council's Office) Forwarded
Copy of Amendment to Oppen & Varco, LLP**